

DON'T "FILL UP" ON WAGE CLAIMS

Question: I own and operate a small gas station. Lately, some of my employees have gotten sloppy about pumping the wrong kind of gas into customers' cars. This usually means that the customer gets more expensive gas than they had asked for, and I don't charge them extra because it was "our" mistake. But those mistakes are starting to put a big dent into "our" pockets!

I'd therefore like to create a written policy stating that when employees do this, the difference in cost will come out of "their" paycheck. Can I do that?

Answer: Although this policy might get your employees' attention, such a deduction would be illegal. Oregon's deduction statute, ORS 652.610, is very strict as to when an employer can take money out of an employee's check.

Payroll deductions are generally not allowed unless they are authorized in writing by the employee. In addition, these deductions usually must be for the employee's benefit, be part of a union contract, be required by law, or be part of a written arrangement where the employer is not the ultimate recipient of the money (such as with automatic monthly deductions to pay off a bank loan).

Since your proposed deduction policy doesn't seem to fit any of the above criteria, you are risking a wage claim if you try to enforce it. Remember, however, that you are still free to use other disciplinary measures to stop this behavior - such as coaching, warnings, suspension, or ultimately termination.

Question: My employee, who does not need a handicapped permit, parked in a "handicapped" spot when he was picking up a part for me at the auto body shop. While the truck was parked in that spot, he got a \$250.00 parking ticket. This wouldn't be so bad if he hadn't used the company truck for this shameful public spectacle. Since then, I have gotten several angry calls from members of the public, saying that because of this, they are not going to do business at my gas station again.

To top it off (no pun intended), the employee handed me his \$250 parking ticket, saying that since he had been on company time, I was responsible for paying the ticket! I told him that not only was I not responsible, but I was going to start "fining" him \$25 for every angry call I received. Can I do that?

Answer: The above-mentioned law makes it clear that you cannot "fine" an employee through a payroll deduction, no matter how egregious his conduct was. As with the previous example, however, you can discipline and ultimately terminate an employee if he violates your policy and/or the law. And unless the employee somehow had reason to

believe that you would take care of such fines, you are free to demand that he pay it out of his own pocket.

Question: While he was driving out of the handicapped parking spot, this same employee sideswiped another car. As a result, the deductible on my automobile insurance is going up. I realize that this is a cost of doing business, but I still think my employees should be responsible for their actions. Therefore, my written policy states that I will deduct any increased deductible from the responsible employee's paycheck. I'm sure I'm okay here, since the policy is in writing and is equally applied. Correct?

Answer: Incorrect. An employer cannot enforce a policy that breaks the law. But as with the other cases, you are free to discipline an employee who violates your company policy.

For more information on this and other important issues affecting Oregon employers, including seminars conducted by our Technical Assistance Unit, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.